IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10766 of 1994

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRAKUMAR N NATHANI

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 10766 of 1994

MR RAMNANDAN SINGH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 10/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution of India, the challenge is against the decision of the respondents, to not to accede to the request for compassionate appointment by the respondent no.1-State of Gujarat.

2. At this stage, let there be first a skeleton projection of facts, relevant and material for the purpose of the consideration of the merits of this petition.

(i) The petitioner's mother, deceased Raniben was serving on the post of Auxiliary Nurse-midwife under District Panchayat, Bharuch.

(ii) She had divorced her husband who happens to be the father of the petitioner.

(iii) Raniben remarried and despite that the petitioner was staying with the deceased, where she was working and was dependant on her, as per the case of the petitioner.

(iv) Petitioners mother died while in service on 16/10/1979. At that time, the petitioner was minor and on attaining majority, he applied for compassionate appointment.

(v) Since the respondents were not considering his claim for compassionate appointment, he filed writ petition being Special Civil Application No.338/86.

(vi) The said first petition was disposed of with a direction to decide the representation awaiting consideration at that time.

(vii) Upon direction, the respondent authority considered and rejected the representation, and, therefore, the petitioner was prompted to file second writ petition, being SCA 3891/86. It was also rejected by this Court and was confirmed in Letter Patents Appeal No. 124/87 with a direction to consider the question of giving compassionate appointment afresh.

3. It is in this context thereafter the respondent-authority rejected, the representation of the petitioner on 28/3/94, and, therefore, again this third round of litigation of invocation of extraordinary, planery, equitable, discretionary powers of this Court for the issuance of the writ or any direction.

4. After having examined extensively, the factual aspects, the norms prescribed in the Government Policy for the purpose of appointment on compassionate ground and the reasons why two earlier representations came to be rejected, this is the third round of litigation, which in the opinion of this Court, is not worth the candle for invocation of writ jurisdiction, as successive representations were already made and they are met with grand failure, which would not "ipso-facto" justify every time the invocation of the writ jurisdiction under Article 226 of the Constitution of India. Otherwise there would be no end of the litigation. No person can be allowed to agitate the same point more than once ordinarily and cannot be encouraged when he goes on invoking such provisions of Constitution, merely, on the ground that again the representation has been rejected. This sole ground is sufficient enough to reject the three petitions on the same ground.

5. Notwithstanding that, even upon examination of the factual scenario emerging from the record of the present case, the circumscribed periphery of the provisions of Article 226 of the Constitution of India, wherein the writ Court under the power of judicial review has not to consider and examine the quality of the decision rendered or the type of the decision taken but only the process through which the decision has been reached, nothing has been pointed out from the record of the present petition which would even remotely suggest the interference of this Court in exercise of its power under Article 226 of the Constitution of India. Nor it is spelt out from the record of the case which would show that there is violation of principles of natural justice or any breach of the prescribed procedure for affording the opportunity of hearing to the party in a given case or is tainted by any other extraneous consideration, unconcerned with the merits or being perverse, resulting into gross failure of justice.

6. The entire process of judicial review is to consider the manner and mode in which the decision has been rendered with which a person is visited with civil or evil consequences and the procedure through which the impugned order or decision or judgment came to be

reached. It is noticed from the record of the present case, that the entire process cannot be said to be tainted with any extraneous consideration, requiring judicial interference in the exercise of powers against the respondent authority in terms of the policy itself. There is no any such vested right for the appointment on the basis of compassionate consideration, as ordinarily, it would offend Constitutional provisions of Articles 14 and 16 of the Constitution of India. The evolution of the entire philosophy of compassionate appointment by passage of time and protection to such right of compassionate appointment upon death of a serving civil servant has been, undoubtedly, found upon the policy of the respective employers and once a claim is found to be not in conformity with the terms and conditions of the stipulation of the appointment of the Government, this Court cannot interfere much less, the writ Court and it has no jurisdiction to add or abstract from the policy formulated for this purpose. However, the Courts, by passage of time, have protected this right, which is the outcome of the policy of the employer in this behalf, and if the policy of the employer of the respondent authority does not in any way entitle the person or the party for appointment on compassionate ground, this Court cannot interfere by adding, substracting or removing the terms and conditions of the stipulation of the Government Policy in this behalf.

7. In the opinion of this Court, upon consideration of the entire factual profile and the relevant proposition of law and the limitation in exercise of the power under Article 226 of the Constitution of India, this is not a fit case for interference with the rejection of representations made earlier by the petitioner to the respondent authority and, therefore, this Court is left with no other alternative but to raise its hand in helplessness and to dismiss it on merits. Hence, this petition is dismissed, without any order as to costs. Rule discharged.

(Dr. J. N. Bhatt, J.)

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